

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAY CHARLES HARRIS,

Petitioner,

v.

JEFFREY A. UTTECHT,

Respondent.

CASE NO. 3:16-CV-05716-BHS-DWC

ORDER

The District Court has referred this action filed under 28 U.S.C. § 2254 to United States Magistrate Judge David W. Christel. Currently before the Court are Petitioner Ray Charles Harris's Motion for Appointment of Counsel and Amended Motion to Compel Discovery. Dkt. 21, 27. After review of the record, these two Motions are denied.

I. Motion for Appointment of Counsel (Dkt. 21)

On October 19, 2016, Petitioner moved for Court-appointed counsel. Dkt. 21. There is no right to appointed counsel in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required or such appointment is "necessary for the effective utilization of discovery procedures." *See McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *United States v. Duarte-Higareda*, 68 F.3d 369, 370 (9th Cir. 1995); *United States v. Angelone*, 894 F.2d 1129, 1130 (9th Cir. 1990); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); Rules Governing Section 2254 Cases in the United States District Courts 6(a) and 8(c). The Court may appoint counsel "at

1 any stage of the case if the interests of justice so require.” *Weygandt*, 718 F.2d at 754. In
2 deciding whether to appoint counsel, the Court “must evaluate the likelihood of success on the
3 merits as well as the ability of the petitioner to articulate his claims pro se in light of the
4 complexity of the legal issues involved.” *Id.*

5 The Court found it lacks jurisdiction over Petitioner’s federal habeas Petition and
6 recommended the Petition be dismissed. *See* Dkt. 31. Therefore, Petitioner has not shown he is
7 likely to succeed on the merits of this case and the Motion for Appointment of Counsel is denied
8 at this time.

9 **II. Amended Motion to Compel Discovery (Dkt. 27)**

10 In the Amended Motion to Compel Discovery, Petitioner states Respondent submitted a
11 fraudulent transcript in support of the Answer to the Petition. Dkt. 27. Petitioner requests an
12 investigation into the allegations of fraud prior to the Court ruling on his Motion for Summary
13 Judgment. *Id.* Petitioner provides only conclusory allegations the transcript was altered. *See id.*
14 Respondent’s counsel, John Samson, filed a Declaration stating he filed “an accurate copy of the
15 transcript as it existed in the file received from the Washington Court of Appeals.” Dkt. 29, Samson
16 Declaration, ¶ 4. He states he did not alter the wording of the transcript and, to his knowledge, no
17 one in his office “altered the wording in the transcript.” *Id.* at ¶ 5.

18 Based on the evidence before the Court, the Court finds Petitioner has not shown the
19 transcript has been altered. Therefore, Petitioner’s Amended Motion to Compel Discovery is
20 denied.

21 Dated this 15th day of November, 2016.

22 

23 David W. Christel
24 United States Magistrate Judge